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Speech of Henry  
Clay on the  
Seminole War

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# SPEECH

OF THE

HON. HENRY CLAY,

IN THE HOUSE OF REPRESENTATIVES OF U. S.

ON THE

SEMINOLE WAR.

HOUSE OF REPRESENTATIVES, }  
January 20. }

In committee of the whole on the state of the Union, (Mr. *Pitkin* in the chair,) the following resolution reported by the committee on military affairs, together with the amendments proposed thereto by Mr. Cobb, being under consideration, viz :

*Resolved*, That the House of Representatives of the United States disapproves the proceedings in the trial and execution of Alexander Arbuthnot and Robert C. Ambrister.

Mr. CLAY (*Speaker*) rose. In rising to address you, sir, said he, on the very interesting subject which now engages the attention of Congress, I must be allowed to say, that all inferences, drawn from the course which it will be my painful duty to take in this discussion, of unfriendliness to either the Chief Magistrate of the country, or to the illustrious military chieftain, whose operations are under investigation, will be wholly unfounded. Towards that distinguished Captain, who has shed so much glory on our country, whose renown constitutes so great a portion of its moral property, I never had, I never can have, any other feelings than those of the most profound respect, and of the utmost kindness. With him my acquaintance is very limited, but, so far as it has extended, it has been of the most amicable kind. I know

said Mr. C. the motives which have been, and which will again be, attributed to me, in regard to the other exalted personage alluded to. They have been, and will be, unfounded. I have no interest, other than that of seeing the concerns of my country well and happily administered. It is infinitely more gratifying to behold the prosperity of my country advancing, by the wisdom of the measures adopted to promote it, than it would be to expose the errors which may be committed, if there be any, in the conduct of its affairs. Mr. C. said, little as had been his experience in public life, it had been sufficient to teach him, that the most humble station is surrounded by difficulties and embarrassments. Rather than throw obstructions in the way of the President, he would precede him, and pick out those, if he could, which might jostle him in his progress—he would sympathise with him in his embarrassments, and commiserate with him in his misfortunes. It was true, that it had been his mortification to differ with that gentleman on several occasions. He might be again reluctantly compelled to differ with him; but he would, with the utmost sincerity, assure the committee, that he had formed no resolution, come under no engagements, and that he never would form any resolution, or contract any engagement, for systematic opposition to his administration, or to that of any other Chief Magistrate.

Mr. C. begged leave further to premise, that the subject under consideration presented two distinct aspects, susceptible, in his judgment, of the most clear and precise discrimination. The one he would call its foreign, the other its domestic, aspect. In regard to the first, he would say, that he approved entirely of the conduct of his government, and that Spain had no cause of complaint. Having violated an important stipulation of the treaty of 1795, that power had justly subjected herself to all the consequences which ensued upon the entry into her dominions, and it belonged not to her to complain of those measures which resulted from her breach of contract; still less had she a right to examine into the considerations connected with the domestic aspect of the subject.

What were the propositions before the committee? The first in order was that reported by the military committee, which asserts the disapprobation of this House of the proceedings in the trial and execution of Arbuthnot and Ambrister. The second, being the first contained in the proposed amendment, was the consequence of that disapprobation, and contemplates the passage of a law to prohibit the execution hereafter of any captive, taken by the army, without the approbation of the President. The

third proposition was, that this House disapproves of the forcible seizure of the Spanish posts, as contrary to orders, and in violation of the constitution. The fourth proposition, as the result of the last, is, that a law should pass to prohibit the march of the army of the United States, or any corps of it, into any foreign territory, without the previous authorization of Congress, except it be in fresh pursuit of a defeated enemy. The first and third were general propositions, declaring the sense of the House in regard to the evils pointed out; and the second and fourth proposed the legislative remedies against the recurrence of those evils.

It would be at once perceived, Mr. C. said, by this simple statement of the propositions, that no other censure was proposed against General Jackson himself, than what was merely consequential. His name even did not appear in any one of the resolutions. The legislature of the country, in reviewing the state of the Union, and considering the events which have transpired since its last meeting, finds that particular occurrences, of the greatest moment, in many respects, had taken place near our southern border. He would add, that the House had not sought, by any officious interference with the duties of the Executive, to gain jurisdiction over this matter. The President, in his message at the opening of the session, communicated the very information on which it is proposed to act. He would ask, for what purpose? That we should fold our arms, and yield a tacit acquiescence, even if we supposed that information disclosed alarming events, not merely as it regards the peace of the country, but in respect to its constitution and character? Impossible. In communicating these papers, and voluntarily calling the attention of Congress to the subject, the President must himself have intended that we should apply any remedy that we might be able to devise. Having the subject thus regularly and fairly before us, and proposing merely to collect the sense of the House upon certain important transactions which it discloses, with the view to the passage of such laws as may be demanded by the public interest, he repeated, that there was no censure any where, except such as was strictly consequential upon our legislative action. The supposition of every new law, having for its object to prevent the recurrence of evil, is, that something has happened which ought not to have taken place, and no other than this indirect sort of censure would flow from the resolutions before the committee.

Having thus given his view of the nature and charac-

ter of the propositions under consideration, Mr. C. said he was far from intimating, that it was not his purpose to go into a full, a free, and a thorough investigation of the facts and of the principles of law, public, municipal and constitutional, involved in them. And, whilst he trusted he should speak with the decorum due to the distinguished officers of the government, whose proceedings were to be examined, he should exercise the independence which belonged to him as a representative of the people, in freely and fully submitting his sentiments.

In noticing the painful incidents of this war, it was impossible not to inquire into its origin. He feared that would be found to be the famous treaty of Fort Jackson, concluded in August, 1814; and he asked the indulgence of the Chairman that the Clerk might read certain parts of that treaty. [The Clerk of the House having accordingly read as requested, Mr. C. proceeded.\*]

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\* The passages read by the Clerk were as follow :

“Whereas an unprovoked, inhuman, and sanguinary war, waged by the hostile Creeks against the United States, hath been repelled, prosecuted and determined, successfully on the part of the said states, in conformity with principles of national justice and honorable warfare : and whereas consideration is due to the rectitude of proceeding dictated by instructions relating to the re-establishment of peace : be it remembered, that, prior to the conquest of that part of the Creek nation, hostile to the United States, numberless aggressions had been committed against the peace, the property, and the lives, of citizens of the U. States, and those of the Creek nation in amity with her, at the mouth of Duck river, fort Mimms, and elsewhere, contrary to national faith, and the regard due to an article of the treaty concluded at New York in the year 1790, between the two nations : that the United States, previous to the perpetration of such outrages, did, in order to ensure future amity and concord between the Creek nation and the said states, in conformity with the stipulations of former treaties, fulfil, with punctuality and good faith, her engagements to the said nation : that more than two thirds of the whole number of chiefs and warriors of the Creek nation, disregarding the genuine spirit of existing treaties, suffered themselves to be instigated to violations of their national honor, and the respect due to a part of their own nation, faithful to the United States, and the principles of humanity, by impostors denominating themselves prophets, and by the duplicity and misrepresentation of foreign emissaries, whose governments are at war, open or understood, with the United States.

Art. 2. The United States will guarantee to the Creek nation the integrity of all their territory eastwardly and northwardly of the said line, [described in the first article] to be run and described as mentioned in the first article,

He had never perused this instrument until within a few days past, and he had read it with the deepest mortification and regret. A more dictatorial spirit he had never seen displayed in any instrument. He would challenge an examination of all the records of diplomacy, not excepting even those in the most haughty period of imperious Rome, when she was carrying her arms into the barbarian nations that surrounded her; and he did not believe a solitary instance could be found of such an inexorable spirit of domination pervading a compact purporting to be a treaty of PEACE. It consisted of the most severe and humiliating demands—of the surrender of large territory—of the privilege of making roads through even what was retained—of the right of esta-

Art. 3. The United States demand that the Creek nation abandon all communication, and cease to hold any intercourse, with any British or Spanish post, garrison or town; and that they shall not admit among them any agent or trader, who shall not derive authority to hold commercial, or other, intercourse with them, by license from the president, or authorized agent of the United States.

Art. 4. The United States demand an acknowledgement of the right to establish military posts and trading houses, and to open roads within the territory guaranteed to the Creek nation by the second article, and a right to the free navigation of all its waters.

Art. 5. The United States demand that a surrender be immediately made, of all the persons and property taken from the citizens of the United States, the friendly part of the Creek nation, the Cherokee, Chickasaw and Choctaw nations, to the respective owners; and the United States will cause to be immediately restored to the formerly hostile Creeks all the property taken from them since their submission, either by the United States, or by any Indian nations in amity with the United States, together with all the prisoners taken from them during the war.

Art. 6. The United States demand the caption and surrender of all the prophets and instigators of the war, whether foreigners or natives, who have not submitted to the arms of the United States, and become parties to these articles of capitulation, if ever they shall be found within the territory guaranteed to the Creek nation by the second article.

Art. 7. The Creek nation, being reduced to extreme want, and not at present having the means of subsistence, the United States, from motives of humanity, will continue to furnish, gratuitously, the necessaries of life, until the crops of corn can be considered competent to yield the nation a supply, and will establish trading houses in the nation, at the discretion of the President of the United States, and at such places as he shall direct, to enable the nation, by industry and economy, to procure clothing.

blishing trading houses—of the obligation of delivering into our hands their prophets. And all this, of a wretched people, reduced to the last extremity of distress, whose miserable existence we had to preserve by a voluntary stipulation to furnish them with bread! When even did conquering and desolating Rome fail to respect the altars and the gods of those whom she subjugated! Let me not be told that these prophets were impostors, who deceived the Indians. They were *their* prophets—the Indians believed and venerated them, and it is not for us to dictate a religious belief to them. It does not belong to the holy character of the religion which we profess, to carry its precepts, by force of the bayonet, into the bosoms of other people. Mild and gentle persuasion was the great instrument employed by the meek founder of our religion. We leave to the humane and benevolent efforts of the reverend professors of Christianity to convert from barbarism those unhappy nations yet immersed in its gloom. But, sir, spare them their prophets! Spare their delusions! Spare their prejudices and superstitions! Spare them even their religion, such as it is! from open and cruel violence. When, sir, was that treaty concluded? On the very day, after the protocol was signed, of the first conference between the American and British Commissioners, treating of peace, at Ghent. In the course of that negociation, pretensions so enormous were set up, by the other party, that, when they were promulgated in this country, there was one general burst of indignation throughout the continent. Faction itself was silenced, and the firm and unanimous determination of all parties was, to fight until the last man fell in the ditch rather than submit to such ignominious terms. What a contrast is exhibited between the contemporaneous scenes of Ghent and of Fort Jackson: What a powerful voucher would the British Commissioners have been furnished with, if they could have got hold of that treaty! The United States *demand*, The United States *demand*, is repeated five or six times. And what did the preamble itself disclose? That two thirds of the Creek nation had been hostile, and one third only friendly to us. Now, he had heard (he could not vouch for the truth of the statement) that not one hostile chief signed the treaty. He had also heard that perhaps one or two of them had. If the treaty really were made by a minority of the nation, it was not obligatory upon the whole nation. It was void, considered in the light of a national compact. And, if void, the Indians were entitled to the benefit of the provision of the ninth article of the treaty of Ghent, by which we bound ourselves to make peace with any



tribes with whom we might be at war, on the ratification of the treaty, and to restore to them their lands as they held them in 1811. Mr. C. said he did not know how the honorable Senate, that body for which he held so high a respect, could have given their sanction to the treaty of Fort Jackson, so utterly irreconcilable as it is with those noble principles of generosity and magnanimity which he hoped to see his country always exhibit, and particularly towards the miserable remnant of the aborigines. It would have comported better with those principles, to have imitated the benevolent policy of the founder of Pennsylvania, and to have given to the Creeks, conquered as they were, even if they had made an unjust war upon us, the trifling consideration, to them an adequate compensation, which he paid for their lands. That treaty, Mr. C. said, he feared, had been the main cause of the recent war. And if it had been, it only added another melancholy proof to those with which history already abounds, that hard and unconscionable terms, extorted by the power of the sword and the right of conquest, served but to whet and stimulate revenge, and to give to old hostilities, smothered, not extinguished, by the pretended peace, greater exasperation and more ferocity. A truce thus patched up with an unfortunate people, without the means of existence, without bread, is no real peace. The instant there is the slightest prospect of relief, from such harsh and severe conditions, the conquered party will fly to arms, and spend the last drop of blood rather than live in such degraded bondage. Even if you again reduce him to submission, the expenses incurred by this second war, to say nothing of the human lives that are sacrificed, will be greater than what it would have cost you to have granted him liberal conditions in the first instance. This treaty, he repeated it, was, he apprehended, the cause of the war. It led to those excesses on our southern borders which began it. Who first commenced them, it was perhaps difficult to ascertain. There was, however, a paper on this subject, communicated at the last session, by the President, that told, in language so pathetic and feeling, an artless tale—a paper that carried such internal evidence, at least, of the belief of the authors of it that they were writing the truth, that he would ask the favor of the committee to allow him to read it.\* I should be very unwilling, Mr.

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\*The following is the letter from ten of the Seminole towns, that Mr. C. read.

*To the commanding officer at Fort Hawkins.*

Dear Sir: Since the last war, after you sent word that we

C. said, to assert, in regard to this war, that the fault was on our side ; but he feared it was. He had heard that that very respectable man, now no more, who once filled the Executive Chair of Georgia, and who, having been

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must quit the war, we, the Red people, have come over on this side. The white people *have carried all the red people's cattle off*. After the war, I sent to all my people to let white people alone, and stay on this side of the river ; and they did so : but the white people *still continue to carry off their cattle*. Barnard's son was here, and I inquired of him what was to be done—and he said we must go to the head man of the white people, and *complain*. I did so, and there was no white head man, and *there was no law in this case*. The whites first begun, and there is nothing said about that ; but great complaint made *about what the Indians do*. This is now three years since the white people killed three Indians ; since that they have killed *three other Indians*, and taken their horses, and what they had ; and this summer they killed *three more* ; and very lately they killed one more. We sent word to the white people that these murders were done, and the answer was, that they were people that were *out-laws*, and we ought to go and kill them. The white people killed our people first ; the Indians then took satisfaction. There are yet three men that the red people have never taken satisfaction for. You have wrote that there were houses burnt ; but we know of no such thing being done : the truth in such cases ought to be told, but this appears otherwise. On that side of the river the white people have killed five Indians ; but there is nothing said about that ; and all that the Indians have done is brought up. *All the mischief the white people have done, ought to be told to their head man*. When there is any thing done, you write to us ; but never write to your head man what the white people do. When the red people send talks, or write, they always send the truth. You have sent to us for your horses, and we sent all that we could find ; but there were some dead. It appears that all the mischief is laid on this town ; but all the mischief that has been done by this town is two horses ; one of them is dead, and the other was sent back. The cattle that we are accused of taking, were *cattle that the white people took from us*. Our young men went and brought them back, with the same marks and brands. There were some of our young men out hunting and they were killed : others went to take satisfaction, and the kettle of one of the men that was killed was found in the house where the woman and two children were killed ; and they supposed it had been her husband who had killed the Indians, and took their satisfaction there. We are accused of killing up Americans, and soon ; but since the word was sent to us that peace was made, we stay steady at home, *and meddle with no person*. You have sent to us respecting the black people on the Suwany river ; we have nothing to do with them. They were put there by the English ; and to them you ought to apply for any thing about them. We do not wish our country desolated by an army pass-

agent of Indian affairs in that quarter, had the best opportunity of judging of the origin of this war, deliberately pronounced it as his opinion, that the Indians were not in fault. Mr. C. said that he was far from attributing to Gen. Jackson any other than the very slight degree of blame which attached to him as the negociator of the treaty of Fort Jackson, and which would be shared by those who subsequently ratified and sanctioned that treaty. But if there were even a doubt as to the origin of the war, whether we were censurable or the Indians, that doubt would serve to increase our regret at any distressing incidents which may have occurred, and to mitigate, in some degree, the crimes which we impute to the other side. He knew, he said, that, when Gen. Jackson was summoned to the field, it was too late to hesitate—the fatal blow had been struck in the destruction of Fowl Town, and the dreadful massacre of Lieut. Scott and his detachment; and the only duty which remained to him was to terminate this unhappy contest.

The first circumstance which, in the course of his performing that duty, fixed our attention, had, Mr. C. said, filled him with regret. It was the execution of the Indian chiefs. How, he asked, did they come into our possession? Was it in the course of fair, and open, and honorable war? No; but by means of deception—by hoisting foreign colors on the staff from which the stars and stripes should alone have floated. Thus ensnared, the Indians were taken on shore, and without ceremony, and without delay, were hung. Hang an Indian! We, sir, who are civilized, and can comprehend and feel the effect of moral causes and considerations, attach ignominy to that mode of death. And the gallant, and refined, and high-minded man, seeks by all possible means to avoid it. But, what cares an Indian whether you hang or shoot him? The moment he is captured, he is considered by his tribe as disgraced, if not lost. They, too, are indifferent about the manner in which he is despatched. But, Mr.

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ing through it, for the concern of other people. The Indians have slaves there also; a great many of them. When we have an opportunity we shall apply to the English for them; but we cannot get them now.

This is what we have to say at present.

Sir, I conclude by subscribing myself your humble servant, &c.  
September, the 11th day, 1817.

N. B.—There are ten towns have read this letter, and this is the answer.

A true copy from the original.

WM. BELL, Aid de Camp.

C. said, he regarded the occurrence with grief for other and higher considerations. It was the first instance that he knew of, in the annals of our country, in which retaliation, by executing Indian captives, had ever been deliberately practised. There may have been exceptions, but if there were, they met with contemporaneous condemnation, and have been reprehended by the just pen of impartial history. The gentleman from Massachusetts may tell me, if he pleases, what he pleases about the tomahawk and scalping knife—about Indian enormities, and foreign miscreants and incendiaries. I, too, hate them; from my very soul I abominate them. But, I love my country, and its constitution; I love liberty and safety, and fear military despotism more even than I hate these monsters. The gentleman, in the course of his remarks, alluded to the state from which I have the honor to come. Little, sir, does he know of the high and magnanimous sentiments of the people of that state, if he supposes they will approve of the transaction to which he referred. Brave and generous, humanity and clemency towards a fallen foe constitute one of their noblest characteristics. Amidst all the struggles for that fair land between the natives and the present inhabitants, Mr. C. said he defied the gentleman to point out one instance in which a Kentuckian had stained his hand by—nothing but his high sense of the distinguished services and exalted merits of General Jackson prevented his using a different term—the execution of an unarmed and prostrate captive. Yes, said Mr. C. there was one solitary exception, in which a man, enraged at beholding an Indian prisoner, who had been celebrated for his enormities, and who had destroyed some of his kindred, plunged his sword into his bosom. The wicked deed was considered as an abominable outrage when it occurred, and the name of the man has been handed down to the execration of posterity. I deny your right thus to retaliate on the aboriginal proprietors of the country; and, unless I am utterly deceived, it may be shewn that it does not exist. But, before I attempt this, said Mr. C. allow me to make the gentleman from Massachusetts a little better acquainted with those people, to whose feelings and sympathies he has appealed through their representative. During the late war with Great Britain, Col. Campbell, under the command of my honorable friend from Ohio, (Gen. Harrison) was placed at the head of a detachment consisting chiefly, he believed, of Kentucky volunteers, in order to destroy the Mississinaway towns. They proceeded and performed the duty, and took some prisoners. And here is evidence

of the manner in which they treated them. (Here Mr. C. read the general orders issued on the return of the detachment.\*) I hope, sir, the honorable gentleman will be now able better to appreciate the character and conduct of my gallant countrymen than he appears hitherto to have done.

But, sir, I have said that you have no right to practise, under color of retaliation, enormities on the Indians. I will advance, in support of this position, as applicable to the origin of all law, the principle, that whatever has been the custom, from the commencement of a subject, whatever has been the uniform usage co-eval and co-existent with the subject to which it relates, becomes its fixed law. Such was the foundation of all common law; and such, he believed, was the principal foundation of all public or international law. If, then, it could be shewn that from the first settlement of the colonies, on this part of the American continent, to the present time, we have constantly abstained from retaliating upon the Indians the excesses practised by them towards us, we were morally bound by this invariable usage, and could not lawfully change it without the most cogent reasons. So far as his knowledge extended, he said, that, from the first settlement at Plymouth or at Jamestown, it had not been our practice to destroy Indian captives, combatants or non-combatants. He knew of but one deviation from the code which regulated the warfare between civilized communities, and that was the destruction of Indian towns, which was supposed to be authorised upon the ground that we could not bring the war to a termination but by destroying the means which nourished it. With this single exception, the other principles of the laws of civilized nations are extended to them, and are thus made law

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\*The following is the extract which Mr. C. read.

“But the character of this gallant detachment, exhibiting, as it did, perseverance, fortitude and bravery, would, however, be incomplete, *if, in the midst of victory, they had forgotten the feelings of humanity.* It is with the sincerest pleasure that the general has heard, that the most punctual obedience was paid to his orders, in not only saving all the women and children, but *in sparing all the warriors who ceased to resist*; and that, even when vigorously attacked by the enemy, the claims of mercy prevailed over every sense of their own danger, and this heroic band *respected the lives of their prisoners.* Let an account of murdered innocence be opened in the records of heaven against our enemies alone. The American soldier will follow the example of his government, and the sword of the one will not be raised against the fallen and the helpless, nor the gold of the other be paid for the scalps of a massacred enemy.”

in regard to them. When did this humane custom, by which, in consideration of their ignorance, and of our enlightened condition, the rigours of war were mitigated, begin? At a time when we were weak, and they were comparatively strong—when they were the lords of the soil, and we were seeking, from the vices, from the corruptions, from the religious intolerance, and from the oppressions of Europe, to gain an asylum among them. And, when is it proposed to change this custom, to substitute for it the bloody maxims of barbarous ages, and to interpolate the Indian public law with revolting cruelties? At a time when the situation of the two parties is totally changed—when we are powerful and they are weak—at a time when, to use a figure drawn from their own sublime eloquence, the poor children of the forest have been driven by the great wave which has flowed in from the Atlantic ocean to almost the base of the Rocky Mountains, and, overwhelming them in its terrible progress, has left no other remains of hundreds of tribes, now extinct, than those which indicate the remote existence of their former companion, the Mammoth of the new world! Yes, sir, it is at this auspicious period of our country, when we hold a proud and lofty station, among the first nations of the world, that we are called upon to sanction a departure from the established laws and usages which have regulated our Indian hostilities. And does the honorable gentleman from Massachusetts expect, in this august body, this enlightened assembly of christians and Americans, by glowing appeals to our passions, to make us forget our principles, our religion, our clemency, and our humanity?

Why was it, Mr. C. asked, that we had not practised towards the Indian tribes the right of retaliation, now for the first time asserted in regard to them? It was because it is a principle, proclaimed by reason, and enforced by every respectable writer on the law of nations, that retaliation is only justifiable as calculated to produce *effect* in the war. Vengeance was a new motive for resorting to it. If retaliation will produce no effect on the enemy, we are bound to abstain from it, by every consideration of humanity and of justice. Will it, then, produce effect on the Indian tribes? No; they care not about the execution of those of their warriors who are taken captive. They are considered as disgraced by the very circumstance of their captivity, and it is often mercy to the unhappy captive, to deprive him of his existence. The poet evinced a profound knowledge of the Indian character, when he put into the mouth of the son of a

distinguished chief, about to be led to the stake and tortured by his victorious enemy, the words—

Begin ye tormentors ! your threats are in vain:

The son of Alknomok will never complain.

Retaliation of Indian excesses, not producing then any effect in preventing their repetition, was condemned by both reason and the principles upon which alone, in any case, it can be justified. On this branch of the subject much more might be said ; but, as he should possibly again allude to it, he would pass from it, for the present, to another topic.

It was not necessary, Mr. C. said, for the purpose of his argument in regard to the trial and execution of Arbuthnot and Ambrister, to insist on the innocency of either of them. He would yield, for the sake of that argument, without enquiry, that both of them were guilty ; that both had instigated the war ; and that one of them had led the enemy to battle. It was possible, indeed, that a critical examination of the evidence would shew, particularly in the case of Arbuthnot, that the whole amount of his crime consisted in his trading, without the limits of the United States, with the Seminole Indians, in the accustomed commodities which form the subject of Indian trade ; and that he sought to ingratiate himself with his customers, by espousing their interests, in regard to the provision of the treaty of Ghent, which he may have honestly believed entitled them to the restoration of their lands. And if, indeed, the treaty of Fort Jackson, for the reasons already assigned, were not binding upon the Creeks, there would be but too much cause to lament his unhappy, if not unjust fate. The first impression made on the examination of the proceedings in the trial and execution of those two men, is, that, on the part of Ambrister, there was the most guilt, but at the same time the most irregularity. Conceding the point of the guilt of both, with the qualification which he had stated, he would proceed to enquire, first, if their execution could be justified upon the principles assumed by General Jackson himself. If they did not afford a justification, he would next enquire if there were any other principles authorizing their execution ; and he would, in the third place, make some observations upon the mode of proceeding.

The principle assumed by General Jackson, which may be found in his general orders commanding the execution of these men, is, " that it is an established principle of the law of nations, that any individual of a nation, making war against the citizens of any other nation, they



being at peace, forfeits his allegiance, and becomes an outlaw and a pirate." Whatever may be the character of individuals waging private war, the principle assumed is totally erroneous, when applied to such individuals associated with a power, whether Indian or civilized, capable of maintaining the relations of peace and war. Suppose, however, the principle were true, as asserted, what disposition should he have made of these men? What jurisdiction, and how acquired, has the military over pirates, robbers, and outlaws? If they were in the character imputed, they were alone amenable, and should have been turned over to the civil authority. But the principle, he repeated, was totally incorrect, when applied to men in their situation. A foreigner, connecting himself with a belligerent, becomes an enemy of the party to whom that belligerent is opposed, subject to whatever he may be subject, entitled to whatever he is entitled. Arbuthnot and Ambrister, by associating themselves, became identified with the Indians; they became our enemies, and we had a right to treat them as we could lawfully treat the Indians. These positions were so obviously correct, that he should consider it an abuse of the patience of the committee to consume time in their proof. They were supported by the practice of all nations, and of our own. Every page of history, in all times, and the recollection of every member, furnish evidence of their truth. Let us look for a moment into some of the consequences of this principle, if it were to go to Europe, sanctioned by the approbation, express or implied, of this house. We have now in our armies probably the subjects of almost every European power. Some of the nations of Europe maintain the doctrine of perpetual allegiance. Suppose Britain and America in peace, and America and France at war. The former subjects of England, naturalized or unnaturalized, are captured by the navy or the army of France. What is their condition? According to the principle of General Jackson, they would be outlaws and pirates, and liable to immediate execution. Were gentlemen prepared to return to their respective districts, with this doctrine in their mouths, and to say to their Irish, English, Scotch, and other foreign constituents, that you are liable, on the contingency supposed, to be treated as outlaws and pirates?

Was there any other principle which justified the proceeding? On this subject, he said, if he admired the wonderful ingenuity with which gentlemen sought a colorable pretext for those executions, he was at the same time shocked at some of the principles advanced. What



said the honorable gentleman from Massachusetts, (Mr. Holmes) in a cold address to the committee? Why, that these executions were only a wrong mode of doing a right thing. A wrong mode of doing a right thing! In what code of public law; in what system of ethics; nay, in what respectable novel; where, if the gentleman were to take the range of the whole literature of the world, will he find any sanction for a principle so monstrous? He would illustrate its enormity by a single case. Suppose a man, being guilty of robbery, is tried, condemned, and executed for murder, upon an indictment for that robbery merely. The Judge is arraigned for having executed, contrary to law, a human being, innocent at heart of the crime for which he was sentenced. The Judge has nothing to do, to ensure his own acquittal, but to urge the gentleman's plea, that he had done a right thing in a wrong way!

The principles which attached to the cases of Arbuthnot and Ambrister, constituting them merely participes in the war, supposing them to have been combatants, which the former was not, he having been taken in a Spanish fortress, without arms in his hands, all that we could possibly have a right to do, was to apply to them the rules which we had a right to enforce against the Indians. Their English character was only merged in their Indian character. Now, if the law regulating Indian hostilities, be established by long and immemorial usage, that we have no moral right to retaliate upon them, we consequently had no right to retaliate upon Arbuthnot and Ambrister. Even if it were admitted that, in regard to future wars, and to other foreigners, their execution may have a good effect, it would not thence follow that you had a right to execute them. It is not always just to do what may be advantageous. And retaliation, during a war, must have relation to the events of that war, and must, to be just, have an operation upon that war, and upon the individuals only who compose the belligerent party. It became gentlemen, then, on the other side, to shew, by some known, certain, and recognized rule of public or municipal law, that the execution of these men was justified. Where is it? He should be glad to see it. We are told in a paper, emanating from the Department of State, recently laid before this house, distinguished for the fervor of its eloquence, and of which the honorable gentleman from Massachusetts has supplied us in part with a second edition, in one respect agreeing with the prototype, that they both ought to be inscribed to the American public—we are justly told in

that paper, that this is the *first* instance of the execution of persons for the crime of instigating Indians to war. Sir, there are two topics which, in Europe, are constantly employed by the friends and minions of legitimacy against our country. The one is an inordinate spirit of aggrandizement — of coveting other people's goods. The other is the treatment which we extend to the Indians. Against both these charges, the public servants, who conducted at Ghent the negotiations with the British commissioners, endeavored to vindicate our country, and he hoped with some degree of success. What will be the condition of future American negociators, when pressed upon this head, he knew not, after the unhappy executions on our southern border. The gentleman from Massachusetts seemed on yesterday to read, with a sort of triumph, the names of the commissioners employed in the negociation at Ghent. Will he excuse me for saying, that I thought he pronounced, even with more complacency and with a more gracious smile, the first name in the commission, than he emphasied that of the humble individual who addresses you. [Mr. *Holmes* desired to explain.] Mr. C. said there was no occasion for explanation: he was perfectly satisfied. [Mr. H. however proceeded to say that his intention was, in pronouncing the gentleman's name, to add to the respect due to the negotiator that which was due to the Speaker of this house.] Will the principle of these men having been instigators of the war, justify their execution? It was a new one; there were no land marks to guide us in its adoption, or to prescribe limits in its application. If William Pitt had been taken by the French army, during the late European war, could France have justifiably executed him, on the ground of his having notoriously instigated the continental powers to war, against France. Would France, if she had stained her character by executing him, have obtained the sanction of the world to the act, by appeals to the passions and prejudices, by pointing to the cities sacked, the countries laid waste, the human lives sacrificed in the wars which he had kindled, and by exclaiming to the unfortunate captive, you miscreant, you monster, have occasioned all these scenes of devastation and blood? What had been the conduct even of England towards the greatest instigator of all the wars of the present age? The condemnation of that illustrious man to the rock of St. Helena, was a great blot on the English name. And Mr C. repeated, what he had once before said, that if Chatham or Fox, or even William Pitt himself, had been prime minister, in England, Bonaparte never had been so condemned. On that

transaction history will one day pass its severe but just censure. Yes, although Napoleon had desolated half Europe ; although there were scarcely a power, however humble, that escaped the mighty grasp of his ambition ; although in the course of his splendid career he is charged with having committed the greatest atrocities, disgraceful to himself and to human nature, yet even his life has been spared. The allies would not, England would not, execute him, upon the ground of his being an instigator of wars.

The mode of the trial and sentencing these men, Mr. C. said, was equally objectionable with the principles on which it had been attempted to shew a forfeiture of their lives. He knew, he said, the laudable spirit which prompted the ingenuity displayed in finding out a justification for these proceedings. He wished most sincerely that he could reconcile them to his conscience. It had been attempted to vindicate the General upon grounds which he was persuaded he would himself disown. It had been asserted, that he was guilty of a mistake in calling upon the court to try them, and that he might have at once ordered their execution, without that formality. He denied that there was any such absolute right in the commander of any portion of our army. The right of retaliation is an attribute of sovereignty. It is comprehended in the war-making power that Congress possesses. It belongs to this body not only to declare war, but to raise armies, and to make rules and regulations for their government. It was in vain for gentlemen to look to the law of nations for instances in which retaliation is lawful. The laws of nations merely laid down the *principle or rule*, and it belongs to the government to constitute the tribunal for applying that principle or rule. There was, for example, no instance in which the death of a captive was more certainly declared by the law of nations to be justifiable, than in the case of spies. Congress has accordingly provided, in the rules and articles of war, a tribunal for the trial of spies, and consequently for the application of the principle of the national law. The legislature had not left the power over spies undefined, to the mere discretion of the commander in chief, or of any subaltern officer in the army. For, if the doctrines now contended for were true, they would apply to the commander of any corps, however small, acting as a detachment. Suppose Congress had not legislated in the case of spies, what would have been their condition ? It would have been a *casus omissus*, and although the public law pronounced their doom, it could not be executed because

Congress had assigned no tribunal for enforcing that public law. No man could be executed in this free country without two things being shewn: 1st. That the law condemns him to death; and, 2dly. That his death is pronounced by that tribunal which is authorised by the law to try him. These principles would reach every man's case, native or foreigner, citizen or alien. The instant quarters are granted to a prisoner, the majesty of the law surrounds and sustains him, and he cannot lawfully be punished with death, without the concurrence of the two circumstances just insisted upon. He denied that any commander in chief, in this country, had this absolute power of life and death, at his sole discretion. It was contrary to the genius of all our laws and institutions.—To concentrate in the person of one individual the powers to make the rule, to judge, and to execute the rule, or to judge and execute the rule only, was utterly irreconcilable with every principle of free government, and was the very definition of tyranny itself; and he trusted that this House would never give even a tacit assent to such a principle. Suppose the commander had made reprisals on property, would that property have belonged to the nation, or could he have disposed of it as he pleased? Had he more power, would gentlemen tell him, over the lives of human beings, than over property? The assertion of such a power to the commander in chief, was contrary to the practice of the government. By an act of Congress which passed in 1799, “vesting the power of retaliation, in certain cases, in the President of the United States”—an act which passed during the quasi war with France, the President is authorised to retaliate upon any citizens of the French republic, the enormities which may be practised, in certain cases, upon our citizens.—Under what administration was this act passed? It was under that which has been justly charged with stretching the constitution to enlarge the Executive powers. Even during the mad career of Mr. Adams, when every means was resorted to for the purpose of infusing vigor into the Executive arm, no one thought of claiming for him the inherent right of retaliation. He would not trouble the House with reading another law, which passed thirteen or fourteen years after, during the late war with Great Britain, under the administration of that great constitutional President, the father of the instrument itself, by which Mr. Madison was empowered to retaliate on the British, in certain instances. It was not only contrary to the genius of our institutions and to the uniform practice of the government, but it was contrary to the obvious

principles on which the general himself had proceeded; for, in forming the court, he had evidently intended to proceed under the rules and articles of war. The extreme number which they provide for is thirteen, precisely that which is detailed in the present instance.—The court proceeded, not by a bare plurality, but by a majority of two-thirds. In the general orders issued from the Adjutant General's office, at head-quarters, it is described as a *court martial*. The prisoners are said in those orders to have been *tried*, 'on the following *charges and specifications*.' The court understood itself to be acting as a court martial. It was so organized—it so proceeded, having a judge advocate, hearing witnesses, the *written* defence of the miserable trembling prisoners, who seemed to have a presentiment of their doom. And the court was finally dissolved. The whole proceeding manifestly shows that all parties considered it as a court martial, convened and acting under the rules and articles of war. In his letter to the Secretary of War, noticing the transaction, the general says: "These individuals were tried under my orders, *legally* convicted as excitors of this savage and negro war, *legally* condemned, and most justly punished for their iniquities." The Lord deliver us from such legal convictions and such legal condemnations! The general himself considered the laws of his country to have justified his proceedings. It was in vain then to talk of a power in him beyond the law, and above the law, when he himself does not assert it. Let it be conceded, that he was clothed with absolute authority over the lives of these individuals, and that, upon his own fiat, without trial, without defence, he might have commanded their execution. Now if an absolute sovereign, in any particular respect, promulgates a rule which he pledges himself to observe, if he subsequently deviates from that rule, he subjects himself to the imputation of odious tyranny. If Gen. Jackson had the power, without a court, to condemn these men, he had also the power to appoint a tribunal. He did appoint a tribunal, and he became, therefore, morally bound to observe and execute the sentence of that tribunal. In regard to Ambrister, it was with grief and pain he was compelled to say, that he was executed in defiance of all law; in defiance of the law to which General Jackson had voluntarily, if you please, submitted himself, and given, by his appeal to the court, his implied pledge to observe. He knew but little of military law, and he had not a taste, by what had happened, created in him for acquiring a knowledge of more; but he believed there

was no example on record, where the sentence of the court has been erased, and a sentence not pronounced by it carried into execution. It had been suggested that the court had pronounced two sentences, and that the general had a right to select either. Two sentences! Two verdicts! It was not so. The first, by being revoked, was as though it had never been pronounced. And there remained only one sentence, which was put aside upon the sole authority of the commander, and the execution of the prisoner ordered. He either had or had not a right to decide upon the fate of that man, without the intervention of a court. If he had the right, he waved it, and, having violated the sentence of the court, there was brought upon the judicial administration of the army a reproach, which must occasion the most lasting regret.

However guilty these men were, they should not have been condemned or executed, without the authority of the law. He would not dwell, at this time, on the effect of these precedents in foreign countries, but he would not pass unnoticed their dangerous influence in our own country. Bad examples are generally set in the cases of bad men, and often remote from the central government. It was in the provinces were laid the abuses and the seeds of the ambitious projects which overturned the liberties of Rome. He beseeched the committee not to be taken captive by the charms of eloquence, and the appeals made to our passions and our sympathies, so as to forget the fundamental principles of our governments. The influence of a bad example would often be felt when its authors and all the circumstances connected with it were no longer remembered. He knew of but one analogous instance of the execution of a prisoner, and that had brought more odium, than almost any other incident, on the unhappy Emperor of France. He alluded to the instance of the execution of the unfortunate member of the Bourbon house. He had sought an asylum in the territories of Baden. Bonaparte dispatched a corps of gen d'armes to the place of his retreat, seized him and brought him to the dungeons of Vincennes. He was there tried by a court martial, condemned and shot. There, as here, was a violation of neutral territory; there the neutral ground was not stained with the blood of him whom it should have protected. And there was another most unfortunate difference, for the American example. The Duc D'Enghein, was executed *according to his sentence*. It is said by the defenders of Napoleon, that the Duke had been *machinating* not merely to overturn the French government, but against the life of its chief. If that were true, he might,

if taken in France, have been legally executed. Such was the odium brought upon the instruments of this transaction, that those persons who have been even suspected of participation in it have sought to vindicate themselves, from what they appear to have considered as an aspersion, before foreign courts. In conclusion of this part of the subject, Mr. C. said, that he most cheerfully and entirely acquitted general Jackson of any intention to violate the laws of the country, or the obligations of humanity. He was persuaded, from all that he had heard, that he thought himself equally respecting and observing both. With respect to the purity of his intentions, therefore, he was disposed to allow it in the most extensive degree. Of his *acts*, said Mr. C. it is my duty to speak with the freedom which belongs to my station. And I shall now proceed to consider some of them, of the most momentous character, as it regards the distribution of the powers of government.

Of all the powers conferred by the constitution of the United States, not one is more expressly and exclusively granted than that is to congress of declaring war. The immortal convention who framed that instrument had abundant reason for confiding this tremendous power to the deliberate judgment of the representatives of the people, drawn from every page of history. It was there seen that nations are often precipitated into ruinous war from folly, from pride, from ambition, and from the desire of military fame. It was believed, no doubt, in committing this great subject to the legislature of the union, we should be safe from the mad wars that have afflicted and desolated and ruined other countries. It was supposed that before any war was declared the nature of the injury complained of would be carefully examined, the power and resources of the enemy estimated, and the power and the resources of our own country, as well as the probable issue and consequences of the war. It was to guard our country against precisely that species of rashness, which has been manifested in Florida, that the constitution was so framed. If then this power, thus cautiously and clearly bestowed upon Congress, has been assumed and exercised by any other functionary of the government, it is cause of serious alarm, and it became that body to vindicate and maintain its authority by all the means in its power, and yet there are some gentlemen, who would have us not merely to yield a tame and silent acquiescence in the encroachment, but to pass even a vote of thanks to the author.

On the 25th of March, 1818, Mr. C. continued, the



President of the United States communicated a message to Congress in relation to the Seminole war, in which he declared that, although, in the prosecution of it, orders had been given to pass into the Spanish territory, they were so guarded as that the local authorities of Spain should be respected. How respected? The President, by the documents accompanying the message, the orders themselves which issued from the Department of War to the commanding general, had assured the Legislature that, even if the enemy should take shelter under a Spanish fortress, the fortress was not to be attacked, but the fact to be reported to that Department for further orders. Congress saw, therefore, that there was no danger of violating the existing peace. And yet, on the same 25th day of March, (a most singular concurrence of dates,) when the Representatives of the people receive this solemn message, announced in the presence of the nation and in the face of the world, and in the midst of a friendly negotiation with Spain, does Gen. Jackson write from his head quarters, that he shall take St. Marks as a necessary depot for his military operations! The General states, in his letter, what he had heard about the threat on the part of the Indians and Negroes, to occupy the fort, and declares his purpose to possess himself of it in either of the two contingencies of its being in their hands or in the hands of the Spaniards. He assumed a right to judge what Spain was bound to do by her treaty, and judged very correctly; but then he also assumed the power, belonging to Congress alone, of determining what should be the effect and consequence of her breach of engagement. Gen. Jackson generally performs what he intimates his intention to do. Accordingly, finding St. Marks yet in the hands of the Spaniards, he seized and occupied it. Was ever, he asked, the just confidence of the Legislative body, in the assurances of the Chief Magistrate, more abused? The Spanish commander intimated his willingness that the American army should take post near him, until he could have instructions from his superior officer, and promised to maintain, in the mean time, the most friendly relations. No! St. Marks was a convenient post for the American army, and delay was inadmissible. He had always understood that the Indians but rarely take or defend fortresses, because they are unskilled in the modes of attack and defence. The threat, therefore, on their part, to seize on St. Marks must have been empty, and would probably have been impracticable. At all events, when Gen. Jackson arrived there, no danger any longer threatened the Spaniard



from the miserable fugitive Indians, who fled on all sides upon his approach. And, sir, upon what plea is this violation of orders, and this act of war upon a foreign power, attempted to be justified? Upon the grounds of the conveniency of the depot and the Indian threat. The first he would not seriously examine and expose. If the Spanish character of the fort had been totally merged in the Indian character, it might have been justifiable to seize it. But that was not the fact, and the bare possibility of its being forcibly taken by the Indians could not justify our anticipating their blow. Of all the odious transactions which occurred during the late war between France and England, none was more condemned in Europe and in this country than her seizure of the fleet of Denmark at Copenhagen. And he lamented to be obliged to notice the analogy which existed in the defences made of the two cases. If his recollection did not deceive him, Bonaparte had passed the Rhine and the Alps, had conquered Italy, the Netherlands, Holland, Hanover, Lubec, and Hamburg, and extended his empire as far as Altona on the side of Denmark. A few days' march would have carried him through Holstein, over the two Belts, through Funen and into the island of Zealand. What then was the conduct of England? It was my lot, Mr. C. said, to fall into conversation with an intelligent Englishman on this subject. 'We knew (said he) that we were fighting for our existence. It was absolutely necessary that we should preserve the command of the seas. If the fleet of Denmark fell into the enemy's hands, combined with his other fleets, that command might be rendered doubtful. Denmark had only a nominal independence. She was, in truth, subject to his sway. We said to her, give us your fleet; it will otherwise be taken possession of by your secret and our open enemy. We will preserve it, and restore it to you whenever the danger shall be over. Denmark refused. Copenhagen was bombarded, gallantly defended, but the fleet was seized.' Every where the conduct of England was censured; and the name even of the negotiator who was employed by her, and who was subsequently the Minister near this government, was scarcely ever pronounced here without coupling with it an epithet indicating his participation in the disgraceful transaction. And yet we are going to sanction acts of violence, committed by ourselves, which but too much resemble it! What an important difference, too, between the relative condition of England and of this country! She perhaps was struggling for her existence. She was combating, single-handed, the most enormous

military power that the world has ever known. Who were we contending with? With a few half-starved, half-clothed, wretched Indians and fugitive slaves. And, whilst carrying on this inglorious war—inglorious as it regards the laurels or renown won in it—we violate neutral rights, which the government had solemnly pledged itself to respect, upon the principle of convenience, or upon the light presumption that, by possibility, a post might be taken by this miserable combination of Indians and slaves.

On the 8th of April, the General writes from St. Marks, that he shall march for the Suwaney river; the destroying of the establishments on which will, in his opinion, bring the war to a close. Accordingly, having effected that object, he writes, on the 20th of April, that he believes he may say the war is at an end for the present. He repeats the same opinion in his letter to the Secretary of War, written six days after. The war being thus ended, it might have been hoped that no further hostilities would have been committed. But, on the 23d of May, on his way home, he receives a letter from the commandant of Pensacola, intimating his surprize at the invasion of the Spanish territory, and the acts of hostility performed by the American army, and his determination, if persisted in, to employ force to repel them. Let us pause and examine this proceeding of the Governor, so very hostile and affrontive in the view of General Jackson. Recollect that he was Governor of Florida; that he had received no orders from his superiors, to allow a passage to the American army; that he had heard of the reduction of St. Marks; and that General Jackson, at the head of his army, was approaching in the direction of Pensacola. He had seen the President's message of the 25th March, and reminded General Jackson of it, to satisfy him that the American government could not have authorized all those measures. Mr. C. said he could not read the allusion made by the Governor to that message, without feeling that the charge of insincerity, which it implied, had at least but too much the appearance of truth in it. Could the Governor have done less than write some such letter? We have only to reverse situations, and to suppose him to have been an American Governor. General Jackson says, that when he received that letter, he no longer hesitated. No, sir, he did no longer hesitate! He received it on the 23d; he was in Pensacola on the 24th, and immediately after set himself before the fortress San Carlos de Baraneas, which he shortly reduced. *Veni, vidi, vici.* Wonderful energy! Admirable promptitude. Alas!

that it had not been an energy and a promptitude within the pale of the constitution, and according to the orders of the Chief Magistrate! It was impossible to give any definition of war, that would not comprehend these acts. It was open, undisguised, and unauthorized hostility.

The honorable gentleman from Massachusetts had endeavored to derive some authority to General Jackson from the message of the President, and the letter of the Secretary of War to Governor Bibb. The message declares that the Spanish authorities are to be respected wherever maintained. What the President means by their being maintained, is explained in the orders themselves, by the extreme case being put of the enemy seeking shelter under a Spanish fort. If even in that case he was not to attack, certainly he was not to attack in any case of less strength. The letter to Governor Bibb admits of a similar explanation. When the Secretary says, in that letter, that Gen. Jackson is fully empowered to bring the Seminole war to a conclusion, he means that he is so empowered by his orders, which, being now before us, must speak for themselves. It does not appear that Gen. Jackson ever saw that letter, which was dated at this place after the capture of St. Marks. He would take a momentary glance at the orders. On the 2d of December, 1817, Gen. Gaines was forbidden to cross the Florida line. Seven days after, the Secretary of War having arrived here, and infused a little more energy into our councils, he was authorized to use a sound discretion in crossing it or not. On the 16th, he was instructed again to consider himself at liberty to cross the line, and pursue the enemy; but, *if he took refuge under a Spanish fortress, the fact was to be reported to the Department of War.* These orders were transmitted to Gen. Jackson, and constituted, or ought to have constituted, his guide. There was then no justification for the occupation of Pensacola, and the attack on the Barancas, in the message of the President, the letter to Gov. Bibb, or in the orders themselves. The gentleman from Massachusetts would pardon him for saying that he had undertaken what even his talents were not competent to—the maintenance of directly contradictory propositions, that it was right in Gen. Jackson to take Pensacola, and wrong in the President to keep it. The gentleman has made a greater mistake than he supposes Gen. Jackson to have done in attacking Pensacola for an Indian town, by attempting the defence both of the President and General Jackson. If it were right in him to seize the place, it is impossible that it

should have been right in the President immediately to surrender it. We, sir, are the supporters of the President. We regret that we cannot support Gen. Jackson also. The gentleman's liberality is more comprehensive than ours. I approved, with all my heart, of the restoration of Pensacola. I think St. Marks ought, perhaps, to have been also restored; but I say this with doubt and diffidence. That the President thought the seizure of the Spanish posts was an act of war, is manifest from his opening message, in which he says that, to have retained them, would have changed our relations with Spain, to do which the power of the Executive was incompetent, Congress alone possessing it. The President has, in this instance, deserved well of his country. He has taken the only course which he could have pursued, consistent with the constitution of the land. And he defied the gentleman to make good both his positions, that the General was right in taking, and the President right in giving up the posts. [Mr. *Holmes* explained. We took these posts, he said, to keep them from the hands of the enemy, and, in restoring them, made it a condition that Spain should not let our enemy have them. We said to her, here is your dagger; we found it in the hands of our enemy, and having wrested it from him, we restore it to you in the hope that you will take better care of it for the future.] Mr. C. proceeded. The gentleman from Massachusetts was truly unfortunate; fact or principle was always against him. The Spanish posts were not in the possession of the enemy. One old Indian only was found in the Barrancas, none in Pensacola, none in St. Marks. There was not even the color of a threat of Indian occupation as it regards Pensacola and the Barrancas. Pensacola was to be restored unconditionally, and might, therefore, immediately have come into the possession of the Indians, if they had the power and the will to take it. The gentleman was in a dilemma, from which there was no escape. He gave up General Jackson when he supported the President; and gave up the President when he supported Gen. Jackson. Mr. C. said he rejoiced to have seen the President manifesting, by the restoration of Pensacola, his devotedness to the constitution. When the whole country was ringing with plaudits for its capture, he said, and he said alone, in the limited circle in which he moved, that the President must surrender it; that he could not hold it. It was not his intention, he said, to enquire whether the army was or was not constitutionally marched into Florida. It was not a clear question, and he was inclined to think that the express authority of Congress

ought to have been asked. The gentleman from Massachusetts would allow him to refer to a part of the correspondence at Ghent different from that which he had quoted. He would find the condition of the Indians there accurately defined. And it was widely variant from the gentleman's ideas on this subject. The Indians, according to the statement of the American commissioners at Ghent, inhabiting the United States, have a qualified sovereignty only, the supreme sovereignty residing in the government of the United States. They live under their own laws and customs, may inhabit and hunt their lands; but acknowledge the protection of the United States, and have no right to sell their lands but to the government of the United States. Foreign powers or foreign subjects have no right to maintain any intercourse with them, without our permission. They are not, therefore, independent nations, as the gentleman supposed. Maintaining the relation described with them, we must allow a similar relation to exist between Spain and the Indians residing within her dominions. She must be, therefore, regarded as the sovereign of Florida, and we are accordingly treating with her for the purchase of it. In strictness, then, we ought first to have demanded of her to restrain the Indians, and, that failing, we should have demanded a right of passage for our army. But, if the President had the power to march an army into Florida without consulting Spain, and without the authority of Congress, he had no power to authorise any act of hostility against her. If the gentleman had even succeeded in shewing that an authority was conveyed by the Executive to Gen. Jackson to take the Spanish posts, he would only have established that unconstitutional orders had been given, and thereby transferred the disapprobation from the military officer to the Executive. But no such orders were, in truth, given. The President had acted in conformity to the constitution, when he forbade the attack of a Spanish fort, and when, in the same spirit, he surrendered the posts themselves.

He would not trespass much longer upon the time of the committee; but he trusted he should be indulged with some few reflections upon the danger of permitting the conduct, on which it had been his painful duty to animadvert, to pass, without a solemn expression of the disapprobation of this House. Recal to your recollection, said he, the free nations which have gone before us. Where are they now, and how have they lost their liberties? If we could transport ourselves back to the ages when Greece and Rome flourished in their greatest pros

perity, and, mingling in the throng, ask a Grecian if he did not fear some daring military chieftain, covered with glory, some Philip or Alexander, would one day overthrow his liberties? No! No! the confident and indignant Grecian would exclaim, we have nothing to fear from our heroes; our liberties will be eternal. If a Roman citizen had been asked, if he did not fear the conqueror of Gaul might establish a throne upon the ruins of the public liberty, he would have instantly repelled the unjust insinuation. Yet Greece had fallen, Cæsar had passed the Rubicon, and the patriotic arm even of Brutus could not preserve the liberties of his country! The celebrated Madame de Stael, in her last and perhaps best work, has said, that in the very year, almost the very month, when the President of the Directory declared that monarchy would never more show its frightful head in France, Bonaparte, with his grenadiers, entered the palace of St. Cloud, and, dispersing, with the bayonet, the deputies of the people, deliberating on the affairs of the state, laid the foundations of that vast fabric of despotism which overshadowed all Europe. He hoped not to be misunderstood; he was far from intimating that Gen. Jackson cherished any designs inimical to the liberties of the country. He believed his intentions pure and patriotic. He thanked God that he would not, but he thanked him still more that he could not, if he would, overturn the liberties of the Republic. But precedents, if bad, were fraught with the most dangerous consequences. Man has been described, by some of those who have treated of his nature, as a bundle of habits. The definition was much truer when applied to governments. Precedents were their habits. There was one important difference between the formation of habits by an individual and by governments. He contracts it only after frequent repetition. A single instance fixes the habit and determines the direction of governments. Against the alarming doctrine of unlimited discretion in our military commanders, when applied even to prisoners of war, he must enter his protest. It began upon them; it would end on us. He hoped that our happy form of government was destined to be perpetual. But if it were to be preserved, it must be by the practice of virtue, by justice, by moderation, by magnanimity, by greatness of soul, by keeping a watchful and steady eye on the Executive; and, above all, by holding to a strict accountability the military branch of the public force.

We are fighting, said Mr. C. a great moral battle for the benefit, not only of our country, but of all mankind.



The eyes of the whole world are in fixed attention upon us. One, and the largest, portion of it is gazing with contempt, with jealousy, and with envy; the other portion, with hope, with confidence, and with affection. Every where the black cloud of legitimacy is suspended over the world, save only one bright spot, which breaks out from the political hemisphere of the West, to brighten, and animate, and gladden the human heart. Obscure that, by the downfall of liberty here, and all mankind are enshrouded in one universal darkness. To you, Mr. Chairman, belongs the high privilege of transmitting, unimpaired, to posterity, the fair character and the liberty of our country. Do you expect to execute this high trust by trampling, or suffering to be trampled, down law, justice, the constitution, and the rights of other people? By exhibiting examples of inhumanity, and cruelty, and ambition? When the minions of despotism heard, in Europe, of the seizure of Pensacola, how did they chuckle, and chide the admirers of our institutions, tauntingly pointing to the demonstrations of a spirit of injustice and aggrandisement made by our country, in the midst of amicable negociation. Behold, said they, the conduct of those who are constantly reproaching kings. You saw how those admirers were astounded and hung their heads. You saw, too, when that illustrious man, who presides over us, adopted his pacific, moderate and just course, how they once more lifted up their heads, with exultation and delight beaming in their countenances. And you saw how those minions themselves were finally compelled to unite in the general praises bestowed upon our government. Beware how you forfeit this exalted character. Beware how you give a fatal sanction, in this infant period of our republic, scarcely yet two score years old, to military insubordination. Remember that Greece had her Alexander, Rome her Cæsar, England her Cromwell, France her Bonaparte, and, that if we would escape the rock on which they split, we must avoid their errors.

How different has been the treatment of General Jackson, and that modest but heroic young man, a native of one of the smallest states in the union; who achieved for his country, on Lake Erie, one of the most glorious victories of the late war. In a moment of passion he forgot himself, and offered an act of violence, which was repented as soon as perpetrated. He was tried, and suffered the judgment pronounced by his peers. Public justice was thought not even then to be satisfied. The Press and Congress took up the subject. My honorable friend

from Virginia, (Mr. Johnson) the faithful and consistent centinel of the law and of the constitution, disapproved, in that instance, as he does in this, and moved an inquiry. The public mind remained agitated and unappeased until the recent atonement, so honorably made by the gallant commodore. And was there to be a distinction between the officers of the two branches of the public service? Are former services, however eminent, to protect from even inquiring into recent misconduct? Is there to be no limit, no prudential bounds to the national gratitude? He was not disposed to censure the President for not ordering a court of inquiry or a general court martial. Perhaps, impelled by a sense of that gratitude, he determined, by anticipation, to extend to the general that pardon which he had the undoubted right to grant after sentence. Let us, said Mr. C. not shrink from our duty. Let us assert our constitutional powers, and vindicate the instrument from military violation.

He hoped gentlemen would deliberately survey the awful position on which we stand. They may bear down all opposition; they may even vote the general the public thanks; they may carry him triumphantly through this house. But, if they do, in my humble judgment, it will be a triumph of the principle of insubordination—a triumph of the military over the civil authority—a triumph over the powers of this house—a triumph over the constitution of the land. And he prayed most devoutly to heaven, that it might not prove, in its ultimate effects and consequences, a triumph over the liberties of the people.





